Part 107—Airport Security

This change incorporates Amendment 107–7, Unescorted Access Privilege, adopted September 26, 1995. This amendment revises § 107.1 and adds new § 107.31.

Bold brackets enclose the most recently changed or added material in each section. The amendment number and effective date of new material appear in bold brackets at the end of each section.

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Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00–44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.

gram by § 108.5(a) of this chapter;

(2) The operation of each airport regularly serving scheduled passenger operations of a foreign air carrier required to have a security program by § 129.25 of this chapter; and

(3) Each person who is in or entering a sterile area on an airport described in paragraph (a)(1) or (a)(2) of this section.

(b) For purposes of this part—

(1) "Airport Operator" means a person who operates an airport regularly serving scheduled passenger operations of a certificate holder or a foreign air carrier required to have a security program by § 108.5(a) or § 129.25 of this chapter;

(2) "Air Operations Area" means a portion of an airport designed and used for landing, taking off, or surface maneuvering of airplanes;

[(3) "Escort" means to accompany or supervise an individual who does not have unescorted access authority to areas restricted for security purposes, as identified in the airport security program, in a manner sufficient to take action should the individual engage in activities other than those for which the escorted access is granted. The responsive actions can be taken by the escort or other authorized individual.]

([4]) "Exclusive area" means that part of an air operations area for which an air carrier has agreed in writing with the airport operator to exercise exclusive security responsibility under an approved security program or a security program used in accordance with § 129.25;

([5]) "Law enforcement officer" means an individual who meets the requirements of § 107.17; and

(a) No airport operator may operate an airport subject to this part unless it adopts and carries out a security program that—

(1) Provides for the safety of persons and property traveling in air transportation and intrastate air transportation against acts of criminal violence and aircraft piracy;

(2) Is in writing and signed by the airport operator or any person to whom the airport operator has delegated authority in this matter;

(3) Includes the items listed in paragraph (b), (f), or (g) of this section, as appropriate; and

(4) Has been approved by the Director of Civil Aviation Security.

(b) For each airport subject to this part regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this section of this chapter) of more than 60 seats, the security program required by paragraph (a) of this section must include at least the following:

(1) A description of each air operations area, including its dimensions, boundaries, and pertinent features.

(2) A description of each area on, or adjacent to, the airport which affects the security of any air operations area.

(3) A description of each exclusive area, including its dimensions, boundaries, and pertinent features, and the terms of the agreement establishing the area.

(4) The procedures, and a description of the facilities and equipment, used to perform the control functions specified in § 107.13(a) by the airport operator and by each air carrier having security responsibility over an exclusive area.

(7) A description of the law enforcement support necessary to comply with § 107.15.

(8) A description of the training program for law enforcement officers required by § 107.17.

(9) A description of the system for maintaining the records described in § 107.23.

(c) The airport operator may comply with paragraph (b), (f), or (g) of this section by including in the security program as an appendix any document which contains the information required by paragraph (b), (f), or (g) of this section.

(d) Each airport operator shall maintain at least one complete copy of its approved security program at its principal operations office, and shall make it available for inspection upon the request of any Civil Aviation Security Special Agent.

(e) Each airport operator shall restrict the distribution, disclosure, and availability of information contained in the security program to those persons with an operational need-to-know and shall refer requests for such information by other than those persons to the Director of Civil Aviation Security of the FAA.

(f) For each airport subject to this part regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 30 but less than 61 seats, the security program required by paragraph (a) of this section must include at least the following:

(1) A description of the law enforcement support necessary to comply with § 107.15(b), and the procedures which the airport operator has arranged to be used by the certificate holder or foreign air carrier to summon that support.

(2) A description of the training program for law enforcement officers required by § 107.17.

(3) A description of the system for maintaining the records described in § 107.23.

(g) For each airport subject to this part where the certificate holder or foreign air carrier is required to conduct passenger screening under a security program required by § 108.5(a)(2) or (3) or § 129.25(b)(2) or (3) of this chapter, or conducts

(Amdt. 107–1, Eff. 9/11/81); (Amdt. 107–5, Eff. 7/7/89)

§ 107.5 Approval of security program.

(a) Unless a shorter period is allowed by the Director of Civil Aviation Security, each airport operator seeking initial approval of a security program for an airport subject to this part shall submit the proposed program to the Director of Civil Aviation Security at least 90 days before any scheduled passenger operations are expected to begin by any certificate holder or permit holder to whom § 121.538 or § 129.25 of this chapter applies.

(b) Within 30 days after receipt of a proposed security program, the Director of Civil Aviation Security either approves the program or gives the airport operator written notice to modify the program to make it conform to the applicable requirements of this part.

(c) After receipt of a notice to modify, the airport operator may either submit a modified security program or petition the Administrator to reconsider the notice to modify. A petition for reconsideration must be filed with the Director of Civil Aviation Security.

(d) Upon receipt of a petition for reconsideration, the Director of Civil Aviation Security reconsiders the notice to modify and either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(e) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Director of Civil Aviation Security to withdraw or amend the notice to modify, or by affirming the notice to modify.

(Amdt. 107–5, Eff. 7/7/89)

§ 107.7 Changed conditions affecting security.

(a) After approval of the security program, the airport operator shall follow the procedures prescribed in paragraph (b) of this section whenever

(3) The airport operator changes any alternate security procedures described in the security program in accordance with § 107.3(b)(6).

(4) The law enforcement support described in the security program in accordance with § 107.3(b)(7), (f)(1), or (g)(1) is not adequate to comply with § 107.15.

(5) Any changes to the designation of the Airport Security Coordinator (ASC) required under § 107.29.

(b) Whenever a changed condition described in paragraph (a) of this section occurs, the airport operator shall—

(1) Immediately notify the FAA security office having jurisdiction over the airport of the changed condition, and identify each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved; and

(2) Within 30 days after notifying the FAA in accordance with paragraph (b)(1) of this section, submit for approval in accordance with § 107.9 an amendment to the security program to bring it into compliance with this part.

(Amdt. 107–1, Eff. 9/11/81); (Amdt. 107–6, Eff. 9/19/91)

§ 107.9 Amendment of security program by airport operator.

(a) An airport operator requesting approval of a proposed amendment to the security program shall submit the request to the Director of Civil Aviation Security. Unless a shorter period is allowed by the Director of Civil Aviation Security, the request must be submitted at least 30 days before the proposed effective date.

(b) Within 15 days after receipt of a proposed amendment, the Director of Civil Aviation Security issues to the airport operator, in writing, either an approval or a denial of the request.

(c) An amendment to a security program is approved if the Director of Civil Aviation Security determines that—

(e) Upon receipt of a petition for reconsideration, the Director of Civil Aviation Security reconsiders the denial and either approves the proposed amendment or transmits the petition, together with any pertinent information, to the Administrator for consideration.

(f) After review of a petition for reconsideration, the Administrator disposes of the petition by either directing the Director of Civil Aviation Security to approve the proposed amendment or affirming the denial.

(Amdt. 107–5, Eff. 7/7/89)

§ 107.11 Amendment of security program by FAA.

(a) The Administrator or Director of Civil Aviation Security may amend an approved security program for an airport, if it is determined that safety and the public interest require the amendment.

(b) Except in an emergency as provided in paragraph (f) of this section, when the Administrator or the Director of Civil Aviation Security proposes to amend a security program, a notice of the proposed amendment is issued to the airport operator, in writing, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment. After considering all relevant material, including that submitted by the airport operator, the Administrator or the Director of Civil Aviation Security either rescinds the notice or notifies the airport operator in writing of any amendment adopted, specifying an effective date not less than 30 days after receipt of the notice of amendment by the airport operator.

(c) After receipt of a notice of amendment from a Director of Civil Aviation Security, the airport operator may petition the Administrator to reconsider the amendment. A petition for reconsideration must be filed with the Director of Civil Aviation Security. Except in an emergency as provided in paragraph (f) of this section, a petition for reconsideration stays the amendment until the Administrator takes final action on the petition.

amendment as proposed or in modified form.

(f) If the Administrator or the Director of Civil Aviation Security finds that there is an emergency requiring immediate action that makes the procedure in paragraph (b) of this section impracticable or contrary to the public interest, an amendment may be issued effective without stay on the date the airport operator receives notice of it. In such a case, the Administrator or the Director of Civil Aviation Security incorporates in the notice of the amendment the finding, including a brief statement of the reasons for the emergency and the need for emergency action.

(Amdt. 107–5, Eff. 7/7/89)

§ 107.13 Security of air operations area.

(a) Except as provided in paragraph (b) of this section, each operator of an airport serving scheduled passenger operations where the certificate holder or foreign air carrier is required to conduct passenger screening under a program required by § 108.5(a)(1) or § 129.25(b)(1) of this chapter as appropriate shall use the procedures included, and the facilities and equipment described, in its approved security program, to perform the following control functions:

(1) Controlling access to each air operations area, including methods for preventing the entry of unauthorized persons and ground vehicles.

(2) Controlling movement of persons and ground vehicles within each air operations area, including, when appropriate, requirements for the display of identification.

(3) Promptly detecting and taking action to control each penetration, or attempted penetration, of an air operations area by a person whose entry is not authorized in accordance with the security program.

(b) An airport operator need not comply with paragraph (a) of this section with respect to an air carrier's exclusive area, if the airport operator's security program contains—

(1) Procedures, and a description of the facilities and equipment, used by the air carrier to

§ 107.14 Access Control System.

(a) Except as provided in paragraph (b) of this section, each operator of an airport regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 60 seats shall submit to the Director of Civil Aviation Security, for approval and inclusion in its approved security program, an amendment to provide for a system, method, or procedure which meets the requirements specified in this paragraph for controlling access to secured areas of the airport. The system, method, or procedure shall ensure that only those persons authorized to have access to secured areas by the airport operator's security program are able to obtain that access and shall specifically provide a means to ensure that such access is denied immediately at the access point or points to individuals whose authority to have access changes. The system, method, or procedure shall provide a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. The system, method, or procedure shall be capable of limiting an individual's access by time and date.

(b) The Director of Civil Aviation Security will approve an amendment to an airport operator's security program that provides for the use of an alternative system, method, or procedure if, in the Director's judgment, the alternative would provide an overall level of security equal to that which would be provided by the system, method, or procedure described in paragraph (a) of this section.

(c) Each airport operator shall submit the amendment to its approved security program required by paragraph (a) or (b) of this section according to the following schedule:

(1) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where at least 25 million persons are screened annually or airports that have been designated by the Director of Civil Aviation

specify that the system, method, or procedure must be fully operational within 24 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(3) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where at least 500,000 but not more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(4) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where less than 500,000 persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(d) Notwithstanding paragraph (c) of this section, an airport operator of a newly constructed airport commencing initial operation after December 31, 1990, as an airport subject to paragraph (a) of this section, shall include as part of its original airport security program to be submitted to the FAA for approval a fully operational system, method, or procedure in accordance with this section.

Docket No. 25568 (54 FR 588, 1/6/89) (Amdt. 107–4, Eff. 2/8/89)

§ 107.15 Law enforcement support.

(a) Each airport operator shall provide law enforcement officers in the number and in a manner adequate to support—

(1) Its security program; and

(2) Each passenger screening system required by part 108 or § 129.25 of this chapter.

holder or foreign air carrier.

(Amdt. 107–1, Eff. 9/11/81)

§ 107.17 Law enforcement officers.

(a) No airport operator may use, or arrange for response by, any person as a required law enforcement officer unless, while on duty on the airport, the officer—

(1) Has the arrest authority described in paragraph (b) of this section;

(2) Is readily identifiable by uniform and displays or carries a badge or other indicia of authority;

(3) Is armed with a firearm and authorized to use it; and

(4) Has completed a training program that meets the requirements in paragraph (c) of this section.

(b) The law enforcement officer must, while on duty on the airport, have the authority to arrest, with or without a warrant, for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located:

(1) A crime committed in the officer's presence.

(2) A felony, when the officer has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section must provide training in the subjects specified in paragraph (d) of this section and either—

(1) Meet the training standards, if any, prescribed by either the State or the local jurisdiction in which the airport is located, for law enforcement officers performing comparable functions; or

(2) If the State and local jurisdictions in which the airport is located do not prescribe training standards for officers performing comparable functions, be acceptable to the Administrator.

(d) The training program required by paragraph (a)(4) of this section must include training in—

(1) The use of firearms;

§ 107.19 Use of Federal law enforcement officers.

(a) Whenever State, local, and private law enforcement officers who meet the requirements of § 107.17 are not available in sufficient numbers to meet the requirements of § 107.15, the airport operator may request that the Administrator authorize it to use Federal law enforcement officers.

(b) Each request of the use of Federal law enforcement officers must be accompanied by the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence and aircraft piracy at the airport and to the air carrier aircraft operations at the airport.

(3) A copy of that portion of the airport operator's security program which describes the law enforcement support necessary to comply with § 107.15.

(4) The availability of State, local, and private law enforcement officers who meet the requirements of § 107.17, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal law enforcement officers needed to supplement available State, local, and private law enforcement officers and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal law enforcement officers.

(7) Any other information the Administrator considers necessary.

(c) In response to a request submitted in accordance with this section, the Administrator may authorize, on a reimbursable basis, the use of law enforcement officers employed by the FAA or by

Docket No. 24883 (51 FR 1352, 1/10/86) (Amdt. 107–3, Eff. 1/10/86)

§ 107.21 Carriage of an explosive, incendiary, or deadly or dangerous weapon.

(a) Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area; and

(2) When entering or in a sterile area.

(b) The provisions of this section with respect to firearms do not apply to the following:

(1) Law enforcement officers required to carry a firearm by this part while on duty on the airport.

(2) Persons authorized to carry a firearm in accordance with § 108.11 or § 129.27.

(3) Persons authorized to carry a firearm in a sterile area under an approved security program or a security program used in accordance with § 129.25.

(Amdt. 107–3, Eff. 1/10/86)

§ 107.23 Records.

(a) Each airport operator shall ensure that—

(1) A record is made of each law enforcement action taken in furtherance of this part;

(2) The record is maintained for a minimum of 90 days; and

(3) It is made available to the Administrator upon request.

(b) Data developed in response to paragraph (a) of this section must include at least the following:

(1) The number and type of firearms, explosives, and incendiaries discovered during any passenger screening process, and the method of detection of each.

(2) The number of acts and attempted acts of air piracy.

(a) As used in this section, "security identification display area" means any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved identification medium unless under airport-approved escort.

(b) After January 1, 1992, an airport operator may not issue to any person any identification media that provides unescorted access to any security identification display area unless the person has successfully completed training in accordance with an FAA-approved curriculum specified in the security program.

(c) By October 1, 1992, not less than 50 percent of all individuals possessing airport-issued identification that provides unescorted access to any security identification display area at that airport shall have been trained in accordance with an FAA-approved curriculum specified in the security program.

(d) After May 1, 1993, an airport operator may not permit any person to possess any airport-issued identification medium that provides unescorted access to any security identification display area at that airport unless the person has successfully completed FAA-approved training in accordance with a curriculum specified in the security program.

(e) The curriculum specified in the security program shall detail the methods of instruction, provide attendees the opportunity to ask questions, and include at least the following topics:

(1) Control, use, and display of airport-approved identification or access media;

(2) Challenge procedures and the law enforcement response which supports the challenge procedure;

(3) Restrictions on divulging information concerning an act of unlawful interference with civil aviation if such information is likely to jeopardize the safety of domestic or international aviation;

(4) Non-disclosure of information regarding the airport security system or any airport tenant's security systems; and

(g) The airport operator shall maintain a record of all training given to each person under this section until 180 days after the termination of that person's unescorted access privileges.

(Amdt. 107–6, Eff. 9/19/91)

§ 107.27 Evidence of compliance.

On request of the Assistant Administrator for Civil Aviation Security, each airport operator shall provide evidence of compliance with this part and its approved security program.

(Amdt. 107–6, Eff. 9/19/91)

§ 107.29 Airport Security Coordinator.

Each airport operator shall designate an Airport Security Coordinator (ASC) in its security program. The designation shall include the name of the ASC, and a description of the means by which to contact the ASC on a 24-hour basis. The ASC shall serve as the airport operator's primary contact for security-related activities and communications with FAA, as set forth in the security program.

(Amdt. 107–6, Eff. 9/19/91)

[§ 107.31 Access investigation.

[(a) On or after January 31, 1996, this section applies to all individuals seeking authorization for, or seeking authority to authorize others to have, unescorted access privileges to the security identification display area (SIDA) that is identified in the airport security program as defined by § 107.25.

[(b) Except as provided in paragraph (e) of this section, each airport operator must ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the area identified in paragraph (a) of this section unless:

(1) The individual has satisfactorily undergone a review covering the past 10 years of employment history and verification of the 5 years preceding the date the access investigation is

current citation and the citation that applied before the statutes are recodified in 1994 are listed.

(i) Forgery of certificates, false making of aircraft, and other aircraft registration violations, 49 U.S.C. 46306 [formerly 49 U.S.C. app. 1472 (b)];

(ii) Interference with air navigation, 49 U.S.C. 46308, [formerly 49 U.S.C. app. 1472 (c)];

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312, [formerly 49 U.S.C. app. 1472(b)(2)];

(iv) Aircraft piracy, 49 U.S.C. 46502, [formerly 49 U.S.C. app. 1472(i);

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504, [formerly 49 U.S.C. app. 1472(j)];

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506, [formerly 49 U.S.C. app. 1472(k)];

(vii) Carrying a weapon or explosive aboard an aircraft, 49 U.S.C. 46505 [formerly 49 U.S.C. app. 1472(l)];

(viii) Conveying false information and threats, 49 U.S.C. 46507 [formerly 49 U.S.C. app. 1472 (m)];

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b), [formerly 49 U.S.C. app. 1472(n)];

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315, [formerly 49 U.S.C. app. 1472(q)];

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314, [formerly 49 U.S.C. app. 1472(r)];

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. § 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(c) The access investigation must include the following steps:

(1) The individual must complete an application form that includes:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 months, during the previous 10-year period;

(iii) Notification that the individual will be subject to an employment history verification and possibly a criminal history records check; and

(iv) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The identity of the individual must be verified through the presentation of two forms of identification, one of which must bear the individual's photograph.

(3) The information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section must be verified in writing, by documentation, by telephone, or in person.

(4) If one or more of the following conditions exists, the access investigation must not be considered complete unless it includes a check of the individual's fingerprint-based criminal history record maintained by the Federal Bureau of Investigation (FBI). The airport operator may request a check of the individual's fingerprint-based criminal history record only if one or more of the following conditions exists:

(i) The individual cannot satisfactorily account for a period of unemployment of 12 months or more during the previous 10-year period;

indicating a possible conviction for one of the disqualifying crimes.

[(d) An airport operator may permit an individual to be under escort as defined in § 107.1 in accordance with the airport security program to the areas identified in paragraph (a) of this section.

[(e) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access to the areas identified in paragraph (a) of this section:

(1) Employees of the Federal government or a state or local government (including law enforcement officers) who, as a condition of employment, have been subject to an employment investigation;

(2) Crew members of foreign air carriers covered by an alternate security arrangement in the approved airport operator security program;

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport tenant or air carrier; and

(4) An individual who has access authority to the U.S. Customs Service security area of the U.S. airport.

[(f) An airport operator will be deemed to be in compliance with its obligations under paragraphs (b)(1) and (b)(2) of this section, as applicable, when it accepts certification from:

(1) An air carrier subject to § 108.33 of this chapter that the air carrier has complied with § 108.33 (a)(1) and (a)(2) for its employees and contractors; and

(2) An airport tenant other than a U.S. air carrier that the tenant has complied with paragraph (b)(1) of this section for its employees.

[(g) The airport operator must designate the airport security coordinator to be responsible for:

(1) Reviewing and controlling the results of the access investigation; and

(2) Serving as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

the individual under direct observation by the airport operator;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification media, one of which must bear his or her photograph;

(4) The fingerprint card must be forwarded to Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591 (Attn: ACO–310, Access Processing); and

(5) Fees for the processing of the criminal checks are due upon application. Airport operators shall submit payment through corporate check, cashier's check or money order made payable to "U.S. FAA," at the rate of $24.00 for each fingerprint card. Combined payment for multiple applications is acceptable.

[(j) In conducting the criminal history records check required by this section, the airport operator must ascertain information on arrests for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

[(k) The airport operator must:

(1) At the time the fingerprints are taken, notify the individual that a copy of any criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the FBI criminal history record discloses information that would disqualify him or her from unescorted access authorization and provide each affected individual with a copy of his or her FBI record if it has been requested. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in the record before any final access decision is made, subject to the following conditions:

(i) Within 30 days after being advised that the FBI criminal history record discloses disqualifying information, the individual must notify the airport operator, in writing, of his

has been made to grant or deny authorization for unescorted access.

[(l) Any individual authorized to have unescorted access privilege to the areas identified in paragraph (a) of this section who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must report the conviction and surrender the SIDA identification medium within 24 hours to the issuer.

[(m) Criminal history record information provided by the FBI must be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

those from whom the employment verification information was obtained, the date the contact was made, or certification of same from air carriers or airport tenants, and any other information as required by the Assistant Administrator for Civil Aviation Security, and

(2) A criminal history records check must include the results of the records check, or a certification by the airport operator or air carrier that the check was completed and did not uncover a disqualifying conviction. These records must be maintained in a manner that protects the confidentiality of the employee, which is acceptable to the Assistant Administrator for Civil Aviation Security.]

[(Amdt. 107–7, Eff. 1/31/96)]

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area (SIDA) of a U.S. airport. This rule implements the employment investigation provisions of Section 105 of the Aviation Security Improvement Act of 1990. The rule will enhance the effectiveness of the U.S. civil aviation security system by ensuring that individuals applying for unescorted access privileges do not constitute an unreasonable risk to the security of the aviation system.

FOR FURTHER INFORMATION CONTACT: Robert Cammorroto (202) 267–7723 or Linda Valencia (202) 267–8222, Office of Civil Aviation Security Policy and Planning, Policy and Standards Division (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the amendment number or docket number. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

Background

Throughout the last decade, the FAA has recognized the need to investigate the backgrounds of individuals authorized to have unescorted access to security-restricted areas at U.S. airports. On November 26, 1985, the FAA amended airport and air carrier security programs to require 5-year background checks for individuals applying for unescorted access authority to the security controlled areas of an airport. The check requires the verification of such individual's employment history and references for the previous 5 years to the extent allowable by law.

The December 21, 1988, destruction of Pan American World Airways Flight 103 by a terrorist bomb while in flight over Lockerbie, Scotland, was the worst disaster of its kind in U.S. civil aviation history. In response to this tragedy, on August 4, 1989, President Bush established the President's Commission on Aviation Security and Terrorism (Commission) (E.O. 12686) to assess the overall effectiveness of the U.S. civil aviation security system.

The Commission's May 15, 1990, report presented a series of recommendations intended to improve the U.S. civil aviation security system. The Commission recommended that Congress enact legislation requiring a criminal history records check for airport employees. The Commission further recommended that the legislation identify certain crimes that indicate a potential security risk, and enable airport operators to deny employment in positions requiring access to security sensitive areas on that basis. The Commission's recommendations formed the basis of the Aviation Security Improvement Act of 1990, Pub. L. 101–604 (the Act).

Section 105(a) of the Aviation Security Improvement Act (the Act) now codified as 49 U.S.C. 44936, added a new provision to the statute. This provision directs the FAA Administrator to promulgate regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports serving air carriers, to such employment investigations, including a criminal history records check, as the Administrator determines necessary to ensure air transportation security.

In March 1991, the aviation industry provided suggestions for implementing Section 105 of the Act through the Aviation Security Advisory Committee (ASAC). These recommendations assisted the FAA in developing its initial notice of proposed rulemaking (NPRM) published in the *Federal Register* on February 13, 1992 (Notice No. 92–3; 57 FR 5352). In that notice the FAA proposed to require a criminal history records check, using the Federal Bureau of Investigation's (FBI) fingerprint-based national criminal history record filing system, for all individuals (including current employees) with SIDA unescorted

records check for all individuals having unescorted access to the SIDA, and the proposal to require escorts for anyone inside the SIDA who did not have such a records check. Specifically, commenters argued that individuals with existing unescorted access privileges should be excluded from the criminal history records check requirement, and that the proposed escorting requirements were neither practical nor cost-effective. Some commenters questioned whether any benefit would result from requiring a criminal history check. Because of these concerns, commenters strongly recommended that the FAA exercise more flexibility in implementing the employment investigation provision of the Act.

Discussion of the SNPRM

In response to comments received during the public meetings and the FAA's re-evaluation of the NPRM, the FAA issued a supplemental notice of proposed rulemaking (SNPRM) (Notice No. 92–3C; 57 FR 43294) on September 18, 1992. The SNPRM focused more broadly on the employment investigation process for individuals applying for unescorted access privilege. The SNPRM proposed an expanded employment application form, an enhanced 5-year employment history verification and, only where appropriate, a criminal history records check. Under this approach, a criminal history records check would be required only when the employment application process, including the history verification, ''triggers'' a need for one. The proposed fingerprint-based criminal history records check process was similar to that proposed in the NPRM.

Discussion of SNPRM Comments

The FAA received 34 comments in response to the SNPRM. Commenters included Congressman James L. Oberstar, 12 airport operators, 3 air carriers, 2 individuals, 3 small businesses, 1 state transportation department, the Federal Bureau of Investigation, the U.S. Customs Service and the following aviation organizations: Air Transport Association (ATA), Air Transport Association of Canada (ATAC), Aircraft Owners and Pilots Association (AOPA), Airline Pilots Association (ALPA), Airport Law Enforcement Agencies Network (ALEAN), Airports Association Council International (AACI), American Association of Airport Executives (AAAE), Association of Flight Attendants (AFA), Families of Pan Am 103/Lockerbie, National Air Transportation Association (NATA), and Regional Airline Association (RAA).

Fifteen commenters support the employment investigation proposed in the SNPRM. Several of these commenters commend the FAA for its response and attention in addressing many of their major concerns in the initial notice.

Seven commenters oppose the proposal, arguing against the need for the employment investigation because no documented terrorist act has ever been committed by someone with both unescorted access privileges and a record of conviction for one of the disqualifying crimes listed in the Act. One commenter questions the link between past convictions for disqualifying crimes and future terrorist actions. Two commenters, a member of Congress and the Families of Pan Am 103/Lockerbie, want a more extensive employment investigation than that proposed in the SNPRM. They suggest extending the employment verification portion to 10 years and applying the employment investigation to individuals with existing unescorted access privilege.

Three commenters also discuss the degree of discretion provided the Administrator in implementing the employment investigation requirement of the Act. One commenter states that the Act does not require this regulation and the FAA should not issue a final rule. Another states that the Act requires only an employment investigation with a criminal history check as the Administrator determines necessary. According to this commenter, issuance of a rule is completely discretionary. A third commenter contends that the statute mandates an employment investigation, not a criminal history records check.

FAA Response: This rule enhances existing FAA security requirements and supports the objectives of the Act through a cost-effective and practical regulatory program. The FAA's security requirements focus on protecting persons and property in air transportation against acts of criminal violence, air piracy, and terrorism. These acts are neither simple nor uniform, and are certainly not limited to sophisticated

the Act indicates Congress' concern that an individual's criminal history could show a disposition to engage in such conduct in the future, which could result in a serious security incident. Moreover, it is a reasonable and feasible precaution to prohibit unescorted access to individuals with a criminal record for certain types of crimes. This rule uses practices similar to other industry standards (e.g., bankers, stockbrokers, and employees at nuclear facilities).

The Act requires the FAA to issue regulations subjecting individuals with unescorted access to U.S. or foreign air carrier aircraft, or to SIDAs of U.S. airports, to such employment investigations, including a criminal history records check, as the Administrator determines necessary to ensure air transportation security. While the Act gives the Administrator flexibility in implementing the employment investigation provision, the Congress clearly contemplated that granting unescorted access privileges would be tied to some type of employment investigation.

In response to the public hearings and written comments, the FAA modified the initial proposal and developed the SNPRM to enhance aviation security in a more cost-effective manner. The Conference Report on the Department of Transportation Fiscal Year 1993 Appropriations legislation addressed the FAA's SNPRM stating:

> The conferees have agreed to delete the language proposed by the House that would have prohibited the Federal Aviation Administration from implementing a rule to require criminal background checks of airline and airport employees. The conferees' action is based on the Federal Aviation Administration's Supplemental Notice of Proposed Rulemaking published in the September 18, 1992, *Federal Register* in which the Federal Aviation Administration revised an earlier proposed rulemaking. The conferees recognize that the Federal Aviation Administration has used its discretionary authority to address the many concerns raised by the industry groups about the operational, financial and constitutional issues associated with its earlier proposal, and have concurred that the Federal Aviation Administration should not be prohibited from moving forward with this approach.

This action clarified Congress' view that the SNPRM conforms with the legislative intent of the Act.

Discussion of the Final Rule

The FAA developed this final rule based on the legislative mandate and the comments received during the rulemaking process. This rule amends 14 CFR parts 107 and 108; and parts 107 and 108 of the Federal Aviation Regulations (FAR). The rule expands the pre-existing requirements for an investigation into the background of individuals applying for unescorted access privileges to the SIDA of U.S. airports by providing specific guidelines for requirements.

The final rule augments and clarifies the process required to satisfactorily determine the eligibility of individuals for unescorted access privileges. This rule requires the employment investigation to include: provision of a 10-year employment history by those applying for access; verification of the most recent 5 years of that history by the employer; and the completion of a criminal history records check when specific conditions are identified as a result of the information obtained through the investigation process.

Similar in concept to the SNPRM, this final rule strengthens the existing employment investigation requirement by providing specific guidance on the type of information that must be obtained and evaluated, identifying specific "triggers" that indicate a need to conduct a criminal history records check, and establishing recordkeeping requirements. This final rule differs from the SNPRM in that it requires individuals applying for unescorted access privileges to provide their employment history for a period of 10 years prior to the date of application rather than 5 years. While the employer will have to review the entire application, consistent with the SNPRM, only the most recent 5 years of this history need be verified as part of the employment investigation review. Hence, while an applicant will have to provide additional employment history information, this will not materially increase the burden on airport operators, air carriers or other non-air-carrier airport tenants involved in granting unescorted access privileges. The FAA believes that this approach increases the effectiveness of the rule in identifying individuals

Final Rule lists both the new statutory numbers for crimes committed and the former citations, in part because FBI records are likely to only have the latter citations.

Another modification to the SNPRM is that the FAA will act as the clearing house for criminal history records checks. The procedures for processing fingerprint cards and associated fees are discussed later in this preamble under § 107.31(i), "Fingerprint Processing."

Further Action Considered

Although this final rule makes an important improvement to the civil aviation security system, and is fully consistent with the rulemaking record, the FAA is currently evaluating whether further changes may be warranted. Subsequent to the close of the comment period for the SNPRM, this country has experienced two major acts of domestic terrorism. The World Trade Center bombing and the recent bombing of a Federal office building in Oklahoma City are evidence of the threat of terrorism within the United States. While neither incident involved an aviation target or appears to have involved individuals who had a disqualifying criminal record that would have been disclosed by an FBI fingerprint check, the incidents do raise questions about whether a broader rule should be considered in light of the general level of threat. It also raises questions about whether the statutory authority should be expanded to include other persons with security responsibilities, such as checkpoint screeners, who do not necessarily have unescorted access to air carrier aircraft or to the secured area of an airport. However, the FAA has concluded that it is essential and appropriate to move forward with this final rule on the existing record and not further delay action until the FAA's evaluation and possible further rulemaking are completed.

The FAA intends to actively consult with airport operators and air carriers as part of this evaluation. The effect of this rule and its actual implementation by airports and air carriers will be followed closely from the outset. In addition, input will be sought from the Aviation Security Advisory Committee. The FAA will determine what further actions may be necessary based on the evaluation. The FAA also will review intelligence information in relation to the possible impact of a more extensive criminal history check requirement.

Section-by-Section Analysis

Section 107.1 Applicability and Definitions

Escort

In the SNPRM, the FAA defined the term "escort" in § 107.1(b)(3). One commenter, NATA, states that the proposed definition of escort implies that this function and any associated responses must be performed by the same individual. NATA suggests that an individual other than the one performing the escort be allowed to perform follow-up actions, and that escorting by electronic means be allowed.

FAA Response: This rule retains the definition of "escort" that was included in the SNPRM, with minor modifications. Only an individual authorized by the airport operator to have access to areas controlled for security purposes may perform escorting. Specific action must be taken, in accordance with local airport procedures, if the individual under escort engages in activities other than those for which the escorted access is granted. The definition is modified by adding a sentence that explains that necessary responsive actions can be taken by the escort or other authorized individuals.

The definition of escort adopted in this rule includes a performance standard. The definition provides the latitude to use various methods and procedures for the escort as long as they meet the established standard. For example, an airport could choose to establish escorting procedures for its general aviation areas that use electronic means and prescribe specific follow-up actions.

This operator recommends the rule apply uniformly to all areas that require identification badges. AACI and AAAE contend that one standard should apply to all, and they are particularly concerned that individuals performing air carrier screening are not included in the employment investigation rulemaking.

FAA Response: This rule applies only to airports that require continuous display of airport-approved identification, i.e., the SIDA as defined in § 107.25. The SIDA typically includes the secured area of an airport (§ 107.14 secured area) and some or all of the air operations areas (§ 107.13).

FAA guidance has defined the areas and types of operations for inclusion within the SIDA. Any expansion of an airport SIDA requires FAA approval. In such instances, application of the policy guidance assures uniformity to the extent practical. Given the varied operational areas at airports, it is not practical for the FAA to further define SIDA in the regulation.

The FAA has clarified that this rule does not apply to smaller airports that do not have a continuous display requirement by removing the reference to these airports contained in § 107.31(a)(2) of the SNPRM. However, if an airport has an area controlled for security reasons that is not a SIDA, the existing 5-year employment history verification continues to apply to individuals requesting unescorted access authority.

The access investigation requirement of this rule applies to individuals seeking unescorted access privileges in the SIDA as well as those in a position to authorize others to have such access and supersedes the 5-year employment history verification in the airport security program for the covered individuals. The issuance or denial of an identification credential for continuous display in the SIDA serves as the vehicle for implementation of this requirement from a practical and enforcement standpoint.

For individuals applying for positions that do not require SIDA unescorted access privileges (and thus are not covered by this rule), the existing security program language requiring the 5-year employment history verification will continue to apply. This includes security screening personnel and any other individuals with unescorted access only to security-controlled areas outside of a SIDA. While having somewhat different requirements may result in some extra administrative effort, the commenters did not provide any specific information showing that this will significantly increase the burden on airports. Except for the authority to access an applicant's criminal history record, an employer may use the application process specified in this rule in all circumstances.

Definition of Employer

One commenter points out that the SNPRM implies that all persons for whom an airport operator may authorize or deny unescorted access privileges are employees of the airport subject to being hired or fired by the airport operator. This commenter explains that many individuals applying for unescorted access privileges are not airport operator employees.

Two commenters address the consequences of the employment investigation proposed in the SNPRM on the employment process. One commenter believes the rule would affect the issuance of unescorted access authority rather than employment. The other commenter states that an employer would probably not hire a person who, based on preliminary employment investigation results, cannot be authorized for unescorted access privileges without going through a FBI criminal record history check. This commenter assumes the termination of the employment inquiry if it appears that a criminal records check is needed.

FAA Response: The FAA agrees that the intent of the investigation is to determine an individual's eligibility for unescorted access authority. The Act, and the final rule, do not specifically prohibit the employment of disqualified individuals; rather, they prohibit individuals convicted of certain enumerated crimes in the past 10 years from being employed in a position having unescorted access to secured areas of a U.S. airport or to U.S. and foreign air carrier aircraft. As previously noted, the final rule uses the term "access investigation" rather than "employment investigation," which was used in the NPRM and SNPRM. This change was made to clarify the intent of the rule. The FAA recognizes that individuals affected by the rule include current employees not previously granted unescorted access

on the effective date of the final rule. This support follows the recommendations made by the ASAC and numerous comments received in response to the initial notice and the SNPRM.

One commenter (Congressman Oberstar) opposes the exclusion for individuals with existing access authority. Congressman Oberstar contends that the Commission's report recommendation and the Act's employment investigation provision are intended to cover individuals with existing authority and individuals applying for unescorted access privilege. He argues that the existing 5-year employment history verification is not subject to FAA approval, and the FAA has not provided guidance on what constitutes an acceptable check. Therefore, Congressman Oberstar states that the final rule must "require that current employment investigation programs conform with those mandated in the final rule" and that "employers with non-conforming programs must be required to conduct 5-year employment checks of current employees to assure that they have undergone the same scrutiny as applicants."

One commenter is uncertain whether individuals exempted under the proposal with a previous conviction for a disqualifying crime would lose their privileges for unescorted access.

FAA Response: While the Act gives the FAA authority to require employment investigations for individuals currently authorized for unescorted access privileges, the Act confers discretion on the FAA Administrator on methods for imposing such a requirement. Individuals authorized to have unescorted access privileges since November 26, 1985, have been subjected to a 5-year employment history verification required by the FAA in the security programs of airport operators and air carriers. Since granting these individuals unescorted access privileges, airport operators and air carriers have had the opportunity to observe the individual's conduct.

The benefits, if any, of subjecting current employees with unescorted access authority to the proposed access investigation would not justify the disruption and cost that such a requirement would place on the air carriers and airport operators. The estimated cost for verifying employment histories of all existing employees would be an additional $5.4 million. Further, because of typically high turnover rates, much of the employee population with unescorted access will have been subjected to the expanded background check within a relatively short period. Therefore, the FAA concludes that air transportation security does not require the retroactive application of this rule to individuals with current unescorted access authority.

This rule does not require individuals currently authorized to have unescorted access to disclose a past conviction for a disqualifying crime. However, if a conviction occurs after the effective date of this rule, an individual with unescorted access authority will be subject to self-disclosure and disqualification from unescorted access privileges (see the Individual Accountability requirements of § 107.31(l) and § 108.33(h)).

120-Day Effective Date

Ten commenters address the timeframe between the final rule issuance date and the effective date the industry must begin to comply with the employee investigation requirements proposed in the SNPRM. Two commenters agree with the 90-day implementation period and seven commenters argue for a longer period of time. These commenters contend that additional time is needed for airport operators, air carriers, and airport tenants to set up the administrative procedures necessary to implement the rule, coordinate with other airports on rights of transfer, budget and plan for required expenditures, and train personnel to implement the rule. Another states that an extended time period will prevent difficulties similar to those being experienced with the implementation of § 107.14. ATA suggests a period of six months to a year and another commenter proposes phasing in the regulation, starting with the Category X airports one year after the effective date. AACI and AAAE recommend that the effective date, rather than the *Federal Register* publication date, be used to exclude individuals holding existing unescorted access privileges from the employment investigation requirements.

FAA Response: The affected parties have been provided ample opportunities to comment on the implementation of Section 105 of the Act through ASAC recommendations, and in response to the NPRM (for which the comment period was extended), three public meetings, and the revised proposal in the

Of the 15 commenters responding on this issue, 13 concur with the FAA's proposal to use the 5-year rather than a 10-year employment history verification as the primary screening procedure. The commenters supporting the 5-year verification argue that covering more than 5 years would produce less useful information because it would be difficult to find previous employers to provide reliable references, require more staff and take a longer time to complete, resulting in additional costs. According to these commenters, the expanded application form, which includes the applicant's certification as to prior criminal convictions, coupled with the enhanced 5-year verification is sufficient to alert management of a need for further investigation. One air carrier comments that it currently requires applicants to provide 10 years of employment information, although it only verifies the previous 5 years.

The two commenters opposing the 5-year employment verification, Congressman Oberstar and the Families of Pan Am 103, believe that it will not reveal convictions that may have occurred in the previous 10 years and that the proposal does not comply with the Act.

FAA Response: At the SNPRM stage, the FAA considered increasing the employment history verification from 5 years to 10 years. It determined that to do so would increase the costs and time spent on the verification without appreciably enhancing aviation security. This could result in triggering relatively few additional records checks, but at an additional cost of at least $5.50 per access investigation or about $9 million over the next decade. However, as a result of the comments, the FAA carefully reviewed the 10-year employment history issue. The FAA determined that it would be useful and reasonable to require individual applicants to provide a 10-year employment history. The additional information will increase the likelihood of identifying 12-month employment gaps and provide an additional decision tool to employers.

Under the rule, airport operators, air carriers and other non-air-carrier airport tenants are required to verify only the most recent 5 years. However, employment gaps of more than 12 months must be resolved for the entire 10-year period or a records check accomplished. From a practical viewpoint, the verification of an individual's 5-year employment history provides an accurate indicator of the individual's background and of the overall veracity of the information provided by the applicant on the form. However, the additional employment history information available to the employer enhances the 5-year verification portion and increases the deterrent value of the application process. Applicants planning to fabricate employment history information will be faced with twice the challenge and their chance of discovery will thus be increased. Truthful applicants will identify employment gaps that require further evaluation.

The 10-year period is also covered by requiring the applicant to list on the application convictions occurring in the past 10 years for any disqualifying crimes. The application form also must notify individuals that they will be subject to an employment history verification and possibly an FBI criminal history records check. Individuals who are subject to a criminal history records check would be disqualified if their record discloses a conviction for any of the listed crimes in the previous 10 years.

Because the disqualifying crimes are serious felonies, an arrest, conviction, and incarceration would normally show up as a gap in the individual's employment history, thus triggering a criminal history records check. The requirement to conduct a criminal history records check should help discourage anyone with a conviction for one of the disqualifying crimes from applying for a position requiring unescorted access authority.

Convictions for Disqualifying Crimes

Twelve commenters discuss the list of convictions for disqualifying crimes. Three of the commenters specifically agree that arson should be a disqualifying crime, as the FAA proposed in the SNPRM. AACI and AAAE oppose having arson included as a disqualifying crime. These organizations argue that, in their view, there is no significant history of arson occurring on an airport ramp.

Ten commenters support disqualifying from unescorted access privileges a person found not guilty by reason of insanity for any of the disqualifying crimes. Some of the commenters argue that insanity

disqualifying crime needs to be better explained. They are also concerned that the regulation would not permit an employer to take into account rehabilitation. They argue that the Act is arbitrary because it assumes rehabilitation would "magically" occur after 10 years, but cannot be taken into account before the 10 years for purposes of allowing unescorted access.

Three commenters state that the regulation should not limit the employer to those crimes on the list. In their view, an employer should have some discretion to include other crimes or conditions as disqualifying.

Two commenters assert there should be measures for punishing applicants who falsify the information they provide on the application forms or, at a minimum, disqualifying the individual from unescorted access. One of these commenters states that individuals convicted of any of the disqualifying crimes would not hesitate to falsify an application form and that stronger measures are needed, such as making it a Federal crime to falsify such information.

FAA Response: As proposed, this rule adds felony arson to the list of disqualifying crimes. (In the SNPRM, FAA proposed "arson"; the rationale for the clarifying change can be found below.) The deliberate nature of the offense and the safety and practical considerations of fueling aircraft make it logical to do so. Although the FAA is not aware of any instance where an individual with unescorted access privileges ever perpetrated an act of arson at an airport, arson has occurred at airports and is too dangerous an act to omit it from the list of disqualifying crimes.

Also, in response to comments received on the initial notice and the SNPRM, this rule adds "not-guilty by reason of insanity" for any of the disqualifying crimes as a disqualifying factor. While recognizing that insanity is not a crime, the FAA concludes that insanity associated with a disqualifying crime should be a disqualifying condition because of the seriousness of these crimes and the difficulty involved in ascertaining recovery.

The FAA has made some minor clarifying changes to the introductory language of § 107.31(b). The phrase "in any jurisdiction" has been added to parallel the language of the Act. Also added is the phrase "a crime involving . . ." to the enumerated offenses in order to make clear that the intent of the rule is to disqualify an individual who has been convicted of one of the disqualifying offenses, even if the name of the statute under which the individual was convicted does not exactly match the language of the final rule. As long as the conviction *involves* a crime specified in the rule, the individual would be disqualified.

In its comment to the NPRM, the Department of Justice's Criminal Division requested several changes to the rule language to which the FAA has agreed. The Division suggested that we limit disqualifying convictions for arson to felony arson in order to exclude instances of minor vandalism. The Division also requested that some of the disqualifying offenses be further defined. These revisions include:

- § 107.31(b)(2)(xvii): the phrase "or hostage taking" has been added after "kidnapping";
- § 107.31(b)(2)(xix): the phrase "or aggravated sexual abuse" has been added after "rape";
- § 107.31(b)(2)(xx): the word "use" has been added before "sale."

It is the FAA's understanding and intent that these changes clarify the intent of Congress but do not substantively expand the list of disqualifying crimes. The Criminal Division also requested that § 107.31(b)(2)(xxv) be revised to include "attempts" to commit any of the aforementioned criminal acts. The Division states that while this section, as proposed, included a conviction for conspiracy to commit any of the enumerated offenses (as required by the Act), the conduct underlying an attempt may be more serious than that required to support a conviction of conspiracy. The FAA has therefore revised this section to include the phrase "or attempt."

The Act provides no discretion for rehabilitation, requiring only a 10-year period from the time of the conviction for the disqualifying offense. This rule also includes the 10-year period for instances of not guilty by reason of insanity.

local determination. However, substantial inconsistencies between required information provided on the application and information obtained during the access investigation would trigger a criminal history records check.

If the access investigation discloses a conviction for a disqualifying crime in the previous 10 years measured from the date the verification is initiated, the individual may not be granted unescorted access authority. The Act does not allow the consideration of the possible rehabilitation of an individual.

The disqualifying crimes identified in this rule include specific sections of 49 U.S.C. Chapters 463 and 465, sections of the United States Criminal Code, offenses named in the Act, and two additional disqualifiers.

The specific sections of 49 U.S.C. Chapters 463 and 465 are: (b) § 46706 forgery of certificates, false marking of aircraft and other aircraft registration violations; (c) § 46308 interference with air navigation; (h) § 46312 improper transportation of a hazardous material; (i) § 46502 aircraft piracy; (j) § 46504 interference with flightcrew members or flight attendants; (k) § 46506 commission of certain crimes abroad aircraft in flight; (l) § 46505 carrying a weapon or explosive aboard an aircraft; (m) § 46507 conveying false information and threats; (n) § 46502(b) aircraft piracy outside the special aircraft jurisdiction of the United States; (q) § 46315 lighting violations involving transporting controlled substances; and (r) § 46314 unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements.

The disqualifying crime in 18 U.S.C. § 32 is the destruction of an aircraft or aircraft facility.

The other disqualifying crimes are: murder; assault with intent to murder; espionage; sedition; kidnapping or hostage taking; treason; rape or aggravated sexual abuse; unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; felony arson; conspiracy or attempt to commit any of these criminal acts; or a finding of not guilty by reason of insanity for any of these criminal acts.

This rule does not limit the ability of airport operators and air carriers to review an individual's complete FBI criminal history record, although the record may not be requested unless one of the regulatory triggers is met. However, any decision to deny unescorted access may be attributed to this rule only if it is based on the individual's conviction within the previous 10 years of an enumerated crime. Any other adverse information contained in the criminal record does not disqualify an individual under this rule.

Section 107.31(c)—Elements of Access Investigations

Employment History Verification

A number of commenters support the process for conducting the verification outlined in the SNPRM. In the SNPRM, the FAA proposed that applicants be required to prove their identity by providing two forms of identification (ID), including a photo ID. In the SNPRM, the FAA proposed that applicants would have to explain employment gaps of more than 12 months in the previous 5 years, and that employers would have to verify information on the application for unescorted access in writing, by telephone, or in person. The FAA solicited comments on whether other means of verifying an individual's employment, such as written documentation, should be acceptable in the verification process.

Two commenters specifically support accepting documentation instead of telephone calls or visits to previous employers. One commenter suggests that legitimate gaps in employment can be documented by copies of school records or certified letters of references from physicians, clergy, or other professionals. Two commenters caution that the rule could have the unintended consequence of generating greater paperwork burdens on employers who must keep records of how they verified employment. Another commenter opposes adding security-related information requirements to its application forms, fearing that such forms could become needlessly lengthy.

To assist the applicant in understanding the question on convictions, it would be advisable for the application to include a list of the disqualifying crimes or conditions. This rule permits supplementing an existing application form with a separate sheet requesting the required information and questions.

The information on the application will help identify applicants who may have a disqualifying conviction. For example, an unexplained gap in employment may have occurred due to incarceration for a conviction of a disqualifying crime. The airport operator is responsible for verifying, or accepting certification that the information required on the employment application was verified, to the extent necessary, to validate representations made regarding the most recent 5-year period. This process is similar to that used for the existing 5-year employment verification conducted by telephone, in writing, or in person.

This rule allows the use of documentation to verify an individual's previous employment history. However, it is important for airport operators and air carriers to carefully examine the documentation provided to guard against counterfeit documentation.

In cases where a previous employer has gone out of business, a reasonable attempt to verify the period of prior employment should be made. Pay stubs, tax records or other documentation may be used to support the statements on the application.

Section 107.31(n) requires maintaining a record of the method used to verify the applicant's most recent 5 years of employment and the results obtained. Section 107.31(n) also discusses the specific recordkeeping requirements.

Conditions Requiring a Criminal History Records Check

Four commenters address the conditions that ''trigger'' the requirement for an FBI criminal history records check. One commenter fully supports the triggers proposed in the SNPRM although it requests that the triggers not be considered as limitations. This commenter suggests that an airport operator or air carrier could elect to conduct a complete criminal history records check if, for example, it found an unexplained gap in employment of less than 12 months. Another commenter questions the adequacy of a 12-month period asserting that a person could serve less than 12 months for a disqualifying crime or could be allowed to plead guilty to a lesser crime.

AACI and AAAE believe that two of the conditions triggering a check are virtually identical to each other. These are: (1) the individual is unable to support statements made or there are significant inconsistencies between information provided on the application in response to questions required by the rule and that which is obtained through the verification process; and (2) information becomes available during the employment history verification indicating a possible conviction for one of the disqualifying crimes.

FAA Response: If one or more of the conditions or ''triggers'' established by the rule is activated, a fingerprint-based check of the criminal records maintained by the FBI must be completed prior to determining if unescorted access authority will be granted. An airport operator or air carrier is not permitted to establish additional triggers for requesting a criminal check under the authority provided by this rule.

The Act provides the statutory authority for airport operators and air carriers to access FBI records. The Act has been implemented by these regulations, which limit the circumstances under which the airport operator or air carrier can get the criminal history record. However, on its own authority, a potential employer could disqualify someone from unescorted access authority or refuse to hire an individual for an unexplained gap in employment of less than 12 months, or for any other reason. Of course, these actions would have to be consistent with other applicable laws. Also under its own authority, an employer could apply the employment verification (but not the FBI criminal history records check), to any employees, not just those covered by this rule.

The ''triggers'' or conditions for the criminal history records check are based on information supplied by the aviation industry on the criteria used by some air carriers to screen job applicants. The combination

compensation, travel records, or other information providing sufficient evidence of an individual's whereabouts. In instances where an individual was self-employed, tax records, billing records, work orders or other means can be used to support the claims made on the application.

Second, a criminal history records check is triggered if there is an inability to substantiate statements made, or if there are significant inconsistencies between the information provided by the applicant or the information obtained during the employment verification. This requirement is intentionally defined using broad terms to allow the airport operator and employer to determine what is acceptable. However, if an individual's employment cannot be verified, this is considered an inability to substantiate statements made.

Third, if information becomes available during the course of the access investigation indicating a possible conviction for one of the disqualifying crimes, a criminal history records check is required.

Responding to the question raised by AACI and AAAE, there is a significant difference between finding out during the access investigation process that information provided was not correct versus finding information that indicates the individual may have a conviction for a disqualifying crime. If incorrect information is provided, it does not necessarily indicate the presence of a disqualifying conviction but raises questions about the individual's truthfulness. An individual's truthfulness is a key component of the access investigation process. Lack of veracity suggests the need to investigate further to determine if the person is trying to conceal a conviction for a disqualifying crime.

The purpose of the last trigger is to identify individuals that may require a criminal check based on any positive information identified during the access investigation. The trigger is intended to substantiate information provided.

Section 107.31(d)—Escorted Access

Under § 107.31(d) of the SNPRM, an individual who does not have unescorted access privileges may be permitted to enter a security area under escort. Five commenters object to allowing an individual who is the subject of a criminal history investigation access to a secured area even under escort because an on-going investigation indicates the likelihood of a criminal record. Three commenters also believe that the escort language proposed in § 107.31(d) of SNPRM is inconsistent with the FAA's policy in § 107.14.

FAA Response: This rule requires individuals who have not been authorized to have unescorted access authority to be under escort, as defined in § 107.1(b)(3), while the SIDA. The employer retains the option of completing the access investigation prior to hiring an individual needing unescorted access privileges rather than providing an escort while the investigation is pending. The primary means of determining an individual's eligibility for unescorted access is the access investigation, including a 5-year employment history verification, which normally takes from 5 to 10 days to complete. Thus, escorting is not necessary for most individuals while undergoing the check because the applicants would not be employed in a position whose utility is predicated on unescorted access until completion of the employment history verification.

The primary reason for escorted access under this rule is for individuals awaiting a criminal history records check. Escorted access is permissible while in the security sensitive area even though a criminal history records check has been triggered. A criminal history records check may take from 30 to 90 days to complete; escorted access is allowable when the employment history verification triggers one of the conditions requiring a criminal check. There is nothing in the rule language that requires an airport operator to provide escorted access into a SIDA to an individual undergoing a criminal history records check.

Under the FAA's policy on § 107.14(a) access controls, an individual with § 107.14(a) access privileges may not be escorted through an access point meeting the requirements of § 107.14. Each person with § 107.14(a) access must be subjected to the access control system. Because § 107.31(d) is applicable

Under this rule, certain categories of individuals are excluded from the access investigation requirement. The FAA expects each airport operator to develop the procedures it uses to implement this section and, where appropriate, issue the individual identification media indicating authorization for unescorted access privileges.

Government Employees

Two commenters request selective application of the exception for Federal, state, and local government employees because employment verification by different entities may not be as stringent as that proposed in the SNPRM. The commenters also raise concerns over the issue of Federal and local law enforcement officers observing the airport's access rules and requirements. Another commenter wants to ensure that the final rule does not alter the access authority of FAA Safety Inspectors using Form 8000–39.

FAA Response: This rule adopts the language proposed in the SNPRM that no additional investigation is required for Federal, state, and local government employees who have been subjected to an employment investigation by their respective agencies. Typically, the government employer subjects applicants to an employment investigation that is at least equivalent to that proposed in this rule. For example, both Standard Form 171 and Optional Form 306 requires Federal applicants to disclose convictions, and the Office of Personnel Management, where appropriate, conducts a criminal history records check. The rule also provides an option to except state and local governments. This exception will reduce the cost and burden of implementing this rule, while maintaining an effective level of security. Airport operators should work with representatives from the Federal, state and local government agencies to resolve the type of biographical information needed to receive the identification media.

With regard to using Form 8000–39, this rule will not have any effect. Form 8000–39 will continue to authorize the FAA Inspectors to be present in an air operations areas to conduct short term duties associated with their safety related responsibilities.

Foreign Air Carrier Employees

Five commenters address the application of the employment investigation to employees of foreign air carriers. ATA believes the alternate security arrangement for foreign air carrier flightcrew members included in the SNPRM creates ''serious competitive imbalances between U.S. and foreign carriers. . . .'' ATA implies that the advantage would be to the foreign carriers.

ATAC states that it does not object to the requirement to conduct employment investigations for individuals employed by Canadian carriers in the U.S. applying for unescorted access. However, ATAC contends that the alternative program for transient air crews is unnecessary because Canadian carriers already subject their air crews to a ''criminal/subversive/financial security check'' before a Transport Canada Airside Restricted Area Pass to operate from Canadian airports is granted. ATAC argues that this security check exceeds the employment investigation requirement in the SNPRM and that the FAA should, therefore, allow Canadian air crews unrestricted access in U.S. airports or at least to areas and offices necessary for operational functions.

A foreign air carrier raises several concerns. The first is related to section 105(a) of the Act which states: ''Nothing in this subsection shall be construed as requiring investigations or record checks where such investigations or record checks are prohibited by applicable laws of a foreign government.''

This commenter states that the investigation of employees hired in another country and assigned to duty in the U.S. could require an investigation of records in some other country where privacy laws prohibit such an investigation. The commenter recommends addressing this conflict in the rule by stating that such investigations be performed only to the extent permitted by law in the foreign country.

This foreign air carrier requests that the alternate security procedures be expanded to include all crew members and to areas beyond the footprint of the aircraft. (The preamble to the SNPRM explained an example of an alternate system as language in the airport security program permitting a foreign

are vital to foreign air carriers, which have significantly fewer permanent personnel based in the U.S. than do domestic carriers. Therefore, an employment investigation of such employees is not feasible because it would counteract the flexibility needed to quickly hire temporary employees for unanticipated increases in workload.

FAA Response: This rule adopts the proposal outlined in the SNPRM, with one modification for foreign air carrier employees. The Act, and hence this rule, apply only to U.S. airports. Therefore, under this rule, foreign nationals and U.S. citizens working in the U.S. for a foreign air carrier will be subject to an access investigation for unescorted access privileges in a manner similar to non-air-carrier airport tenants. While the airport operator is responsible for ensuring that the investigation is completed, the foreign air carrier could perform the employment history verification as it currently does at most airports.

This rule allows an airport operator to implement an alternate security arrangement in its approved airport security program for foreign air carrier crew members. The final rule uses the broader term "crewmember" rather than "flightcrew member" as proposed in the SNPRM. In accordance with present FAA policy on ramp movement, however, the alternate arrangement would be limited to foreign flightcrew members (i.e., captain, second-in-command, flight engineer, or company check pilot) in the immediate vicinity of the aircraft to which they are assigned. The FAA is willing to consider the merits of including cabin crew and expanding the scope of ramp movement for foreign air carrier crew members on a case-by-case basis. Any alternate arrangements should be developed with and coordinated through the airport operator.

Responding to the concerns raised by ATA over the proposed authority to permit alternate arrangements for foreign crew members, the FAA has determined that it is reasonable from a security standpoint, and consistent with international practices, to permit limited access (around the assigned aircraft). Failure to provide alternate procedures for foreign air carrier crews could result in the adoption of additional requirements for investigations by foreign countries for U.S. air carrier personnel. There are significant operational restrictions associated with using the alternate arrangement that outweigh any associated financial advantages that may accrue to a foreign air carrier. In addition, there is a very low probability of detecting disqualifying convictions for a foreign national based outside the U.S. through an investigation of FBI records because those records normally include only arrests and convictions occurring in the U.S.

This rule does not specifically allow for the acceptance of the Transport Canada Airside Restricted Area Pass as meeting the rule's requirement. However, the required access investigation is more easily accomplished for Canadian flightcrew members as a result of that country's program. The approach of the Canadian system, or similar systems in use by other countries, could result in the facilitation of using documentary evidence of employment verification.

The FAA agrees that the Act limits employment investigations to the extent allowable by the law in the foreign country. However, if the employment history verification or other aspects of the access investigation could not be completed as a result of another country's law, this would trigger a need to conduct the criminal history records check.

The problem of temporary employees is not specific or limited to foreign carriers. This rule would apply to any individual applying for unescorted access privileges. Considering the short period of time it takes to perform the employment history verification portion of the access investigation (which would authorize most individuals for unescorted access authority), the FAA contends this is not an unreasonable requirement; moreover, if the assignment is of short duration, escorting may be the simplest solution.

Transfer of Privilege

Two commenters believe that an individual who has been continuously employed by an air carrier, airport operator, or non-air-carrier tenant should be authorized unescorted access without having to be continuously employed in a position requiring unescorted access. Another commenter recommends that

SIDA access. The requirement to be continuously authorized should not present a burden for companies transferring individuals in positions within a company.

The rule does not attempt to establish uniform procedures for accepting transfers; rather, the rule sets the minimum requirement for continuous employment in a position with unescorted access privileges. The FAA expects the airport operator and the air carrier to cooperate in determining the process for an individual transferring from one carrier to another.

This rule does not affect the regulatory requirement for SIDA training. Under § 107.25 and associated FAA policy, individuals who have been subject to SIDA training who subsequently transfer their unescorted access authority must receive site-specific SIDA training at the new airport.

Individuals Subject to Investigation by Customs

One commenter suggests that the FAA coordinate with the U.S. Customs Service on its pending access rule for Customs Service security areas of an airport. The commenter's concerns focus on the effect on operations, costs, and possible duplication of the two rules.

FAA Response: This rule permits an airport operator to accept the background checks performed by the U.S. Customs Service to meet the FAA's access investigation requirement. Accepting the background investigation by Customs avoids a redundant check, while providing an equivalent or higher level of security for individuals with unescorted access. Because the Customs check is more extensive (it includes misdemeanor theft convictions) than that contained in this final rule, failure to obtain access authority to the Customs area would not preclude an individual from obtaining unescorted access to the SIDA, but would require the individual to be subjected to an access investigation under this rule.

Section 107.31(f)—Investigations by Air Carriers and Airport Tenants

Eight commenters address issues concerning the airport operator's acceptance of air carrier employment investigations and non-air carrier tenants' employment history verifications.

ATA notes that in the SNPRM preamble an airport operator is given the latitude to expand the scope of the employment history verification to cover areas beyond that required under the proposal. ATA urges the FAA to limit an airport operator's authority to impose additional verification requirements on air carriers. It recommends that the final rule clearly state that the air carrier is exclusively responsible only for fulfilling the employment investigation requirements of § 108.33.

ATA and RAA express concern that the SNPRM preamble explanation of § 107.31(f) allows an airport operator discretion to accept certification from an air carrier. These commenters recommend that the process be mandatory thus requiring the airport operator to accept their checks. The carriers have concerns that airport operators may require employment investigations beyond that necessary to meet the regulatory requirement.

One commenter states that an airport operator should be able to rely on certification by any tenant employer for the employment verification. Another commenter believes that the authority to certify employees should extend to part 129 carriers who operate in accordance with an exclusive area agreement and to indirect air carriers subject to part 109.

Three commenters oppose the requirement that the airport operator be responsible for the criminal history records check of all airport tenants other than U.S. air carriers and two commenters support this requirement. One commenter argues that the results of any criminal investigation would be most beneficial to the direct employer, as would information concerning arrests with no disposition. One commenter opposes any delegation to air carriers of the responsibility for criminal history records checks of their contractors because many of these contractors serve more than one air carrier. According to this commenter, conducting criminal history records checks on contractors should be the responsibility of the airport operator.

regulatory obligation. The airport operator may accept a written statement that the employment history verification and, where appropriate, the criminal history records check were performed as part of the process of an air carrier issuing identification credentials to its employees. If a specific air carrier employee or its contractor employee is receiving airport-issued identification, the airport operator must receive certification for each employee prior to issuing an identification credential. The certification should include a statement that the investigation was conducted in accordance with § 108.33 and provide the name(s) of the individuals requiring the unescorted access authority credential. However, the air carrier should retain the specific documentation supporting the access investigation.

The rule also includes a provision permitting an airport operator to accept written certification from airport tenants that they have reviewed the applicant's 10-year employment history and verified the most recent 5 years of that history. Again, the airport tenant should retain the specific documentation supporting this certification. Pursuant to the Act, only airport operators and air carriers can request a criminal history records check, although the costs of such checks will normally be borne by the employer. Thus, the airport operator must process criminal history records checks for all airport tenants other than U.S. air carriers. However, the airport operator is responsible only for the unescorted access privilege determination. Employment-related decisions such as hiring and firing, and an individual's status while a criminal history records check is pending, rest with the airport tenant.

For purposes of this rule, non-air-carrier tenants include airline food service companies, fixed base operators, foreign air carriers, and indirect air carriers subject to part 109 whose employees receive airport identification.

Section 107.31(g)—Appointing Contact

Six commenters respond to the issue of the airport operator appointing a person who will be responsible for reviewing the results of the employment investigation, determining an individual's eligibility for unescorted access and serving as the liaison if the individual disputes the results of a criminal check. As proposed in the SNPRM, the appointed person could delegate the day-to-day duties, but would serve as the FAA's point of contact with the airport for purposes of monitoring compliance with the employment investigation requirement. In the SNPRM, the FAA also solicited comments on whether it should require the contact to be the airport security coordinator (ASC). Five commenters acknowledge that the ASC would be the contact, but believe the FAA should not require or specify the position.

FAA Response: This final rule requires the airport operator to designate the ASC required under § 107.29 as the contact for access investigations. The ASC can delegate the duties while continuing to serve as the FAA's point of contact with the airport for purposes of monitoring compliance with this rule. This is consistent with the requirements of § 107.29 that the ASC serve as the airport operator's primary contact for security-related activities and communications with the FAA.

The ASC, or designee, is responsible for reviewing the results of the access investigation and determining an individual's eligibility for unescorted access privileges. The ASC also serves as the liaison when the individual disputes the results of the criminal history records check that revealed information that would disqualify the person from unescorted access.

Section 107.31(h)—Individual Notification

The FAA received no comments on this section.

NOTE: An individual covered by this rule must be notified of the need for a criminal history records check prior to commencing the check. Because the FAA will serve as the entity to process the criminal history records check required by this rule, this section of the final rule is modified from that proposed in the SNPRM by removing the language related to designating an outside entity.

the processor of FBI criminal history records checks for the nuclear industry.

Nine comments address the issue of having a centralized processor or "clearing house" batch and process the FBI criminal history records check requests. Many of the commenters note that the proposed language in the SNPRM would result in far fewer criminal history checks being conducted (compared to the NPRM) and question whether a non-governmental clearing house is feasible for so few requests. As an alternative, they recommend that the FAA serve as the processor.

Three commenters focus on the related issue of screening criminal history records check results. RAA supports the concept in the SNPRM that allows the airport operator and air carriers to review an individual's complete record. Two commenters state that a complete FBI record should not be sent to the airport operator or air carrier; rather, the records should be screened in some manner to determine whether a disqualifying conviction occurred and only that information provided. These commenters believe there is a significant privacy issue involved in releasing an entire record. NATA believes that the FAA should check the records and report any disqualifying convictions to the airport operator. AOPA suggests developing a reply form for the airport operator to submit along with the criminal history records check card. AOPA recommends that the FBI could use this form to return a response to the airport of "qualified or disqualified" for unescorted access privileges. AOPA also states that because the FAA is proposing to mandate these criminal checks, it must take an active role in protecting the rights of individuals affected by this rule and institute strict procedures to protect sensitive personal information.

Seven commenters express concerns over the authority needed by airport operators and air carriers to gain access to the FBI's criminal history record database. Another commenter suggests that the FAA obtain access authority to the National Crime Information Center (NCIC) automated database to allow for a "name check" of individuals applying for unescorted access authority.

FAA Response: The FAA has consulted with the Attorney General, as required by the Act, and has obtained the Department of Justice's concurrence in the following procedures. The FAA is following the recommendations made by the commenters, including the FBI, and will serve as the central processor for the criminal history records check requests submitted to the FAA by airport operators and air carriers. The FAA will serve as the clearing house, in a manner similar to the NRC and will ensure fingerprint cards are forwarded to the FBI in a timely and cost effective manner. A $24.00 fee will enable the FAA to recover its cost of processing and obtaining the FBI records. The FAA will charge the same $24.00 user fee currently levied by FBI on the banking, securities, commodities futures trading industries and the NRC. The fee is subject to increase without prior notice upon determination by the FBI. Parties subject to this rule will be notified of fee increases by amendments to this rule in the future.

Upon completion of the FBI records check, the complete FBI record will be forwarded to the requesting entity. The regulation places specific limits on the use of the information contained in the criminal history records check. This issue is addressed in the preamble discussion of § 107.31(m).

The FAA has researched the possibility of using the NCIC system to allow airport operators and air carriers an alternative method for obtaining criminal history information for individuals applying for the privilege of unescorted access. As stated in the Notice of Public Meetings, and as discussed at the public meetings held on the initial notice, under published policy established by the NCIC's Advisory Policy Board, the NCIC is not available to check the records of applicants for employment in aviation related industries. In addition, checking an individual's name and other identifying information does not provide the same level of positive identification that derives from the use of a check based on an individual's fingerprints.

This final rule includes procedures for collecting fingerprints and requires that one set of legible fingerprints be taken on a card acceptable to the FBI (i.e., Federal Document 258). The airport operator may choose to have the airport law enforcement officers take the fingerprints. The FAA also requires verifying the individual's identity when taking his/her fingerprints. The individual must present two forms of identification, one of which must bear the individual's photograph. A current driver's license, military

operator will receive complete results of the check.

Section 107.31(j)—Making the Access Determination

Six commenters raise concerns over the airport operator or the air carrier being responsible for resolving any arrests for disqualifying crimes that have no disposition listed on the FBI criminal history records check result. ATA and RAA also suggest that the individual seeking employment should be responsible for furnishing any required disposition documentation.

FAA Response: This final rule requires the airport operator to ascertain the disposition of arrests for any of the enumerated offenses when no disposition has been recorded in the FBI's records, e.g., the case is pending or the FBI has no record. This task would be conducted with the affected individual and the jurisdiction where the arrest took place in order to determine whether a disposition has been recorded in that jurisdiction but not forwarded to the FBI. While the investigation will require assistance from the individual, it is the responsibility of the airport operator or the air carrier to complete the investigation. In determining whether to grant unescorted access to an individual with an arrest for one of the disqualifying crimes with no disposition, the airport operator should weigh all relevant information available on the individual, including the results of the access investigation.

Section 107.31(k)—Availability and Correction of FBI Records and Notification of Disqualification

Two commenters state that allowing applicants to challenge the accuracy of the FBI record will require involvement by the airport operator in a possibly lengthy and expensive process.

FAA Response: The Act requires that individuals have the right to challenge the accuracy of their criminal history record. While such a challenge may be a time consuming process, the FAA has no discretion to eliminate this right. This rule does require the individual to notify the airport operator or its designee within 30 days of receipt of the record of his or her intent to correct any information believed to be inaccurate. Because the FBI maintains the records and has established procedures to address possible inaccuracies, it is appropriate to forward a copy of any requests for correction to the FBI. However, the FBI prefers that the actual request be made by the individual directly to the agency (i.e., Federal, state or local jurisdiction) that supplied the questioned criminal history information to the FBI.

When taking the individual's fingerprints, the airport operator must notify the individual that he or she will be provided, upon written request, a copy of the results of the FBI criminal history records check prior to rendering the access decision.

If the airport operator is not notified by the individual within the 30-day period that he or she intends to dispute the results, the airport operator may make the final access decision. The airport operator is neither obligated to provide the individual with an escort before the correction (if any) is made, nor is the employer obligated to hire the applicant after the record is corrected. However, after being informed that the disqualifying information has been corrected, the airport operator would have to obtain a copy of the revised FBI record before the individual could be authorized for unescorted access.

If an individual is disqualified for unescorted access privileges based on the findings of the criminal history records check, the individual must be notified that such a determination has been made.

Section 107.31(l)—Individual Accountability

Two commenters address the issue requiring an individual with unescorted access authority to report any disqualifying convictions occurring after the completion of the employment investigation. One commenter concurs with the decision not to require a recurrent investigation and another states that the SNPRM did not adequately address the procedures that would apply in these cases.

FAA Response: This final rule adopts the ''self-disclosure'' provision included in the SNPRM. Any person holding unescorted access authority who is convicted of any of the disqualifying crimes after January 31, 1996, must surrender the identification media to the issuer within 24 hours of learning

The FAA received no comments on this section.

NOTE: As required by the Act, this rule also includes limits on the dissemination of the criminal history information. The FAA limits distribution of such information to: (1) the individual to whom the record pertains or someone authorized by that person; (2) the airport operator; and (3) the individuals designated by the Administrator, e.g., FAA special agents.

Section 107.31(n)—Recordkeeping

Six commenters address the requirements for maintaining records. ATA requests that the final rule clearly require maintaining only that information necessary to satisfy the regulation requirements. ATA is concerned that FAA inspectors may interpret the record provision as providing discretion to require the maintenance of information beyond that which is necessary to meet the requirements set forth in the SNPRM.

Two airport operators express concerns over the administrative burden of maintaining all employment history records of non-air-carrier tenants. One commenter agrees that maintaining the criminal history records checks is the airport operator's responsibility and that this should not be a burden to airports because they already keep confidential information.

FAA Response: The FAA has determined that the airport or air carrier shall maintain a written record for individuals granted unescorted access authority that includes specific information on the employment history verification and the results of an FBI criminal history records check, if conducted. The burden on airport operators to maintain records for tenants already exists because airport operators maintain records for individuals who are currently issued identification media. This rule standardizes the information to be maintained to include the results of the FBI criminal history records check, where applicable. The airport tenant can continue to maintain the more comprehensive record and associated paperwork of the employment history verification.

The FAA has modified this section from that proposed in the SNPRM to clarify that an airport operator need not maintain comprehensive records and documentation for air carrier employees. As discussed under § 107.31(f), the record can be a certification from the air carrier that the access investigation was performed. The airport operator would have no further recordkeeping requirements related to air carrier employees. Furthermore, in order to permit the destruction of FBI criminal history records check results and minimize storage problems for airport operators and air carriers, the recordkeeping requirements allow for the retention of only a certification that the check was completed and revealed no disqualifying convictions. Another minor editorial change in this regard was the deletion of the reference to airport tenants providing certification of criminal history records check results since these parties are not authorized to request such checks.

This final rule contains two recordkeeping requirements: (1) a record indicating that the applicant's 10-year employment history has been reviewed and the most recent 5-year employment history verified, and (2) a copy of the results of the criminal history record check received from the FBI or certification of same, where appropriate. The airport operator can accept written certification from airport tenants that the employment history was reviewed and the verification was performed. However, the airport tenant should maintain a record of calls made, plus a record of correspondence or any other documents received. The tenant must make this information available to the airport operator when requested by the FAA for inspection purposes.

For individuals subject to a criminal history records check, the records received from the FBI must be maintained in a manner that prevents the unauthorized dissemination of its contents.

The airport operator must maintain a written record until 180 days after termination of the individual's authority.

Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this rule, the FAA has determined that it: (1) is "a significant regulatory action" as defined in section 3 (f)(4) of the Executive Order; (2) is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Since the rule is not significant under section 3 (f)(4) of the Executive Order, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule which is presented in the following paragraphs.

The expected costs of the rule consist of two parts: (1) the cost of enhancing the employment history verification process; and (2) the cost of conducting a criminal history records check on applicants whose employment verification triggers it. Employers may avoid the latter cost by simply choosing to end the employment process for the individual in question.

First-year costs for the industry will range from $0.5 to $1.4 million. Airports, air carriers, and other airport tenants will incur these costs. The cost of the rule comes from the time necessary to complete an estimated 64,000 employment history verifications by non-air-carrier airport tenants and from an estimated 970 to 1,940 criminal history records checks by all airport and air carrier employers. The FAA estimates that, in 1995, 194,000 employees will apply for unescorted SIDA access privilege. Between 1995 and 2004, the total cost of the new requirements will range from $6.2 to $16.2 million. The discounted cost ranges from $4.3 to $11.1 million.

Because aviation security requires an intricate set of interlocking measures, the benefits ascribed to this final rule derive from strengthening the U.S. civil aviation security network. By enhancing the civil aviation security network, this final rule decreases the possibility that a deadly and costly terrorist or criminal act will occur. This final rule assures a greater measure of safety through tighter screening of individuals applying for jobs requiring unescorted secure area access. Specifically, this final rule reduces the civil aviation security risk by further assuring that persons who have committed certain crimes do not have access to airport secure areas.

The FAA has determined that the final rule provides sufficient additional security to make it cost beneficial.

The rule will have a negligible impact on international trade. Also, the proposed regulatory action will not have a significant economic impact on a substantial number of small entities.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, nonprofit organizations, and small cities. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities, defined by FAA Order 2100.14A—"Regulatory Flexibility Criteria and Guidance," is more than one-third, but not less than eleven, of the small entities subject to the existing rule. To determine if the rule will impose a significant cost impact on these small entities, the annualized cost imposed on them must not exceed the annualized cost threshold established in FAA Order 2100.14A.

Small entities potentially affected by the rule are small airports, air carriers, fixed-base operators, and catering companies. However, many of the requirements of the rule are already standard procedures

it is over the size threshold of 200 employees.

Caterers: The FAA evaluates small caterers as aircraft repair facilities since FAA Order 2100.14A does not define a threshold for caterers. This order defines the criteria as 200 employees or less for the size threshold and $4,130 for the cost threshold. Hence, like the aircraft repair facilities, in order to exceed the cost threshold, caterers would have to employ 786 persons, which would exceed the size threshold of 200 employees.

In conclusion, the rule will not impose a significant impact on a substantial number of small entities.

Federalism Implications

This rule does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Most airports covered by the rule are public entities (state and local governments). However, relatively few of the covered individuals are actually employed by the airport operator, and most of the costs for the required investigations would be borne by the airport tenants and air carriers. Thus, the overall impact is not substantial within the meaning of Executive Order 12612. Therefore, in accordance with that Executive Order, it is determined that this rule would not have sufficient Federal implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Authority Standards and Recommended Practices to the maximum extent practicable. The FAA is not aware of any differences that this final rule will present.

Paperwork Reduction Act

Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection burden for this rule under OMB Approval Number 2120–0564. For further information contact: The Information Requirements Division (M–34), Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4375 or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, Room 3228, Washington DC 20503, (202) 395–7340.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this rule is a significant regulatory action under Executive Order 12866. This rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act but is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The regulatory evaluation for this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

The Rule Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 107 and 108 of the Federal Aviation Regulations (14 CFR parts 107 and 108) effective January 31, 1996.

The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 106(g); 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.
